

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TRUSTEES OF THE CHICAGO REGIONAL)	
COUNCIL OF CARPENTERS PENSION FUND,)	
TRUSTEES OF THE CHICAGO REGIONAL)	
COUNCIL OF CARPENTERS WELFARE FUND,)	
TRUSTEES OF THE CHICAGO REGIONAL)	
COUNCIL OF CARPENTERS SUPPLEMENTAL)	
RETIREMENT FUND, and TRUSTEES OF THE)	
CHICAGO REGIONAL COUNCIL OF)	
CARPENTERS APPRENTICE TRAINING FUND,)	
)	
Plaintiffs,)	CIVIL ACTION
v.)	
)	
TOP FLIGHT BUILDERS LLC,)	
)	
and)	
)	
ZACH CUNNINGHAM,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs, Trustees of the Chicago Regional Council of Carpenters Pension Fund, et al., by their attorney, McGann Kettermann & Rioux, complain of the Defendants Top Flight Builders LLC and Zach Cunningham as follows:

1. This action arises under Section 502 of the Employee Retirement Income Security Act ("ERISA")(29 U.S.C. §§ 1132, 1145), and Section 301(a) of the Labor Management Relations Act of 1947 ("LMRA"), as amended 29 U.S.C. § 185(a), and the Illinois Wage Payment and Collection Act ("Wage Act"). 820 ILCS 115/1, et seq.. Jurisdiction is founded on the existence of questions arising thereunder, or under 28 U.S.C § 1367.

2. The Chicago Regional Council of Carpenters Pension Fund, the Chicago Regional Council of Carpenters Welfare Fund, the Chicago Regional Council of Carpenters Supplemental Retirement Fund, and the Chicago Regional Council of Carpenters Apprentice Training Fund

("Trust Funds") receive contributions from numerous employers pursuant to Collective Bargaining Agreements between the employers and the Chicago Regional Council of Carpenters ("Union"), and therefore, are multiemployer plans. (29 U.S.C. §1002). The Trust Funds are administered at 12 East Erie Street, Chicago, Illinois and venue is proper in the Northern District of Illinois.

3. Top Flight Builders LLC is an employer engaged in an industry affecting commerce that entered into a Collective Bargaining Agreement requiring Top Flight Builders LLC to pay benefit contributions to the Trust Funds and to remit dues deducted from its carpenters employees' wages.

4. Top Flight Builders LLC is required to pay liquidated damages, interest, reasonable attorney fees, court costs, and other reasonable amounts incurred in the collection process.

5. Top Flight Builders LLC must submit a monthly contribution report listing the hours worked by its carpenter employees, and the benefit contributions owed to the Trust Funds. Top Flight Builders LLC must also submit payment of the corresponding benefit contributions listed on its monthly contribution report to the Trust Funds.

6. Top Flight Builders LLC breached the provisions of the Collective Bargaining Agreement and the Trust Agreements by failing to submit the required complete reports and full payments for the period of September 2020 through May 2021 in an amount of benefit contributions of at least \$692,561.72.

7. Top Flight Builders LLC failed to submit liquidated damages and interest during this same period for the delinquent contributions.

8. Top Flight Builders LLC breached the provisions of the Collective Bargaining Agreements and the Trust Agreements by failing to submit Union dues withheld from its carpenter employees' wages in the amount of \$31,594.63 for the months of September 2020 through May 2021.

9. At all times material herein, there was in effect the Illinois Wage Payment and Collection Act ("Wage Act"), 820 ILCS 115/1, et seq.

10. Defendant Zach Cunningham is an officer of Top Flight Builders LLC

11. Defendant Zach Cunningham knowingly permitted and willfully refused to remit Union dues on behalf of its carpenter employees in violation of the Wage Act, 820 ILCS 115/14.

12. Section 13 of the Wage Act provides that "any officers of a corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation, 820 ILCS 115/13.

13. Defendant Zach Cunningham is an employer within the meaning of the Wage Act.

14. Defendant Zach Cunningham deducted Union dues from Top Flight Builders LLC's carpenter employees' wages and failed to remit that money to the Trust Funds.

15. The Union dues are wages as defined by Section 2 of the Illinois Wage and Payment Collection Act, which have been assigned by the carpenter employees to the Union, 820 ILCS 115/2.

16. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1367.

17. Defendant Zach Cunningham is personally liable for Union dues withheld from Top Flight Builders LLC's carpenter employees' wages in the amount of \$31,594.63 for the months of September 2020 through May 2021.

18. Plaintiffs have complied with all conditions precedent in bringing this suit.

19. Plaintiffs have been required to employ the undersigned attorney to collect the monies that may be found to be due and owing from the Defendants.

20. Defendants are obligated to pay the attorney fees and court costs incurred by the Plaintiffs pursuant to 29 U.S.C. §1132(g)(2)(D).

21. Pursuant to 29 U.S.C. §1132(g)(2)(B), the Plaintiffs are entitled to interest on any monies that may be found to be due and owing from the Defendants.

22. Pursuant to 29 U.S.C. §1132(g)(2)(C), Plaintiffs are entitled to an amount equal to the greater of:

- a) double interest on the unpaid contributions; or
- b) interest plus liquidated damages provided for under the Trust Agreements not in excess of 20% of amount that is due.

23. Pursuant to the Trust Agreements, Plaintiffs are entitled to liquidated damages at the rate of 1.5% compounded monthly.

WHEREFORE, Plaintiffs pray:

- a) That Top Flight Builders LLC be ordered to pay \$31,594.63 in Union dues for the months of September 2020 through May 2021.
- b) That Top Flight Builders LLC be ordered to pay \$692,561.72 in benefit contributions for the months of September 2020 through May 2021.
- c) That Top Flight Builders LLC be ordered to pay liquidated damages pursuant to the Trust Agreements.
- d) That Top Flight Builders LLC be ordered to pay interest on the amount that is due pursuant to 29 U.S.C. §1132 (g)(2)(B).
- e) That Top Flight Builders LLC be ordered to pay interest or liquidated damages on the amount that is due pursuant to 29 U.S.C. §1132 (g)(2)(C).
- f) That Top Flight Builders LLC be ordered to pay the reasonable attorney's fees and costs incurred by the Plaintiffs pursuant to the Trust Agreements and 29 U.S.C. §1132 (g)(2)(D).
- g) That Zach Cunningham be ordered to pay \$31,594.63 in Union dues withheld from Top Flight Builders LLC's carpenter employees' wages during the months of September 2020 through May 2021.
- h) That Plaintiffs have such other and further relief as by the Court may be deemed just and equitable all at the Defendants' costs pursuant to 29 U.S.C. §1132(g)(2)(E).

Respectfully submitted,

TRUSTEES OF THE CHICAGO REGIONAL COUNCIL
OF CARPENTERS PENSION FUND et al

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